

GLENN AGRE BERGMAN & FUENTES LLP

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June 11, 2021

VIA E-MAIL

Margaret A. Dale, Esq.
Proskauer Rose LLP
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Re: Response to June 10, 2021 Letter

Dear Ms. Dale:

We write in response to your letter, dated June 10, 2021, in which the Financial Oversight and Management Board (the “Board”) alleges that Ambac Assurance Corporation (“Ambac”) has misrepresented to the Court that Milliman Inc.’s 2018 pension valuation reports for ERS, TRS and JRS (the “2018 Reports”) have been withheld from production by the Board in response to Ambac’s Rule 2004 discovery requests to Milliman. The Board now demands that Ambac provide the factual basis for its assertions.

Ambac’s understanding that the 2018 Reports are being withheld from production by the Board is based on statements made by Milliman’s counsel in two separate meet-and-confers held on February 17, 2021 and May 26, 2021, neither of which was attended by attorneys for the Board or AAFAF (the “Government Parties”). After Milliman’s counsel represented on the February 17 meet-and-confer that the “government” was holding back the 2018 Reports—an assertion that, in context, Ambac’s counsel understood to refer to both the Board and AAFAF—Ambac raised the issue with the Government Parties in the context of Rule 2004 discovery. While the Board claims that Ambac “never raised any such concern with the Oversight Board,” the discovery record makes clear that Ambac informed the Government Parties, including the Board, that it had learned from other parties that the 2018 Reports were being held back. (*See* Ltr. from M. Pocha, dated April 9, 2021, at 2.) Subsequently, on the May 26 meet-and-confer, Milliman’s counsel explicitly stated that when the 2018 reports would be published was out of Milliman’s hands, and confirmed that Milliman was holding back documents based on instructions from AAFAF or the Board.

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Indeed, three attorneys for Ambac—from two different law firms—specifically recall that counsel to Milliman unambiguously stated that the “government” was holding back the 2018 Reports. Again, in the context of the overall discussions, counsel to Ambac understood Milliman’s counsel’s use of the term “government” to refer to both the Board and AAFAF. To the extent Milliman’s counsel intended to indicate that it was only AAFAF, not the Board, who was holding back the 2018 Reports, Milliman’s counsel, copied on this correspondence, should clarify the record in that regard.

We also note that your letter conspicuously fails to disclose why the 2018 Reports still have not been provided to Ambac and other stakeholders despite repeated assurances that it would be released in the fall of 2020. If there are different reasons why the 2018 Reports still have not been provided, please explain why. We can then discuss how that information should be addressed with the Court.

We are available to meet-and-confer on this issue if you believe that would be productive.

Sincerely,



Andrew K. Glenn

cc: Atara Miller, Esq.
Frank S. Harrison, Esq.
Brett Ingerman, Esq.
Madhu Pocha, Esq.
Timothy W. Mungovan, Esq.